Supreme Court, U.S.
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IN THE

Supreme Court of the United States

October Term, 1970.

No. ~~[illegible]~~ 70-187

PATTIE BLACK COTTON, *et al.*,

Petitioners,

v.

SCOTLAND NECK CITY BOARD OF EDUCATION, *et al.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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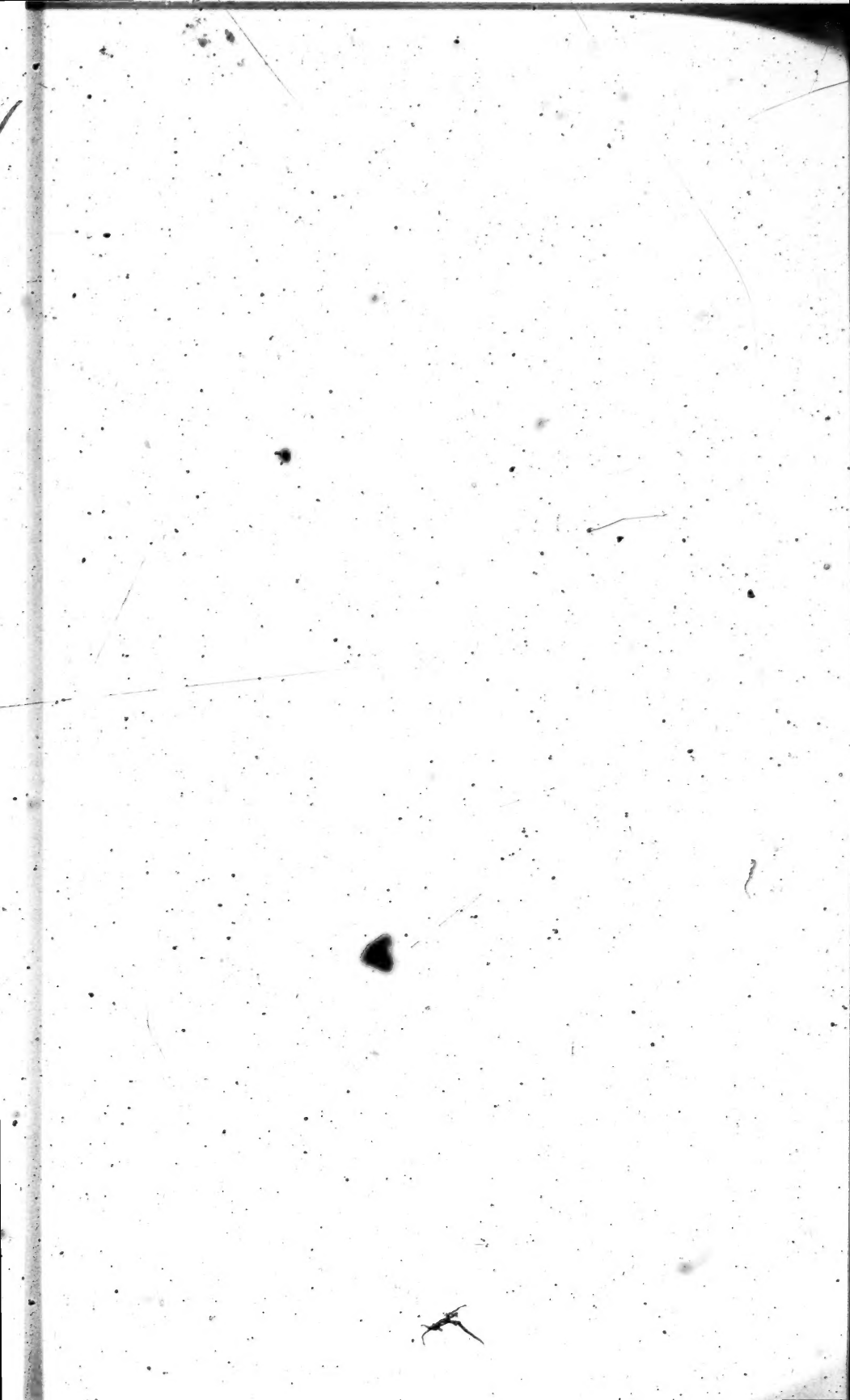

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Opinions Below

The opinion of the Court of Appeals and the dissenting opinions are not yet reported and are reprinted as Appendix A (pp. 1a-18a) and Appendix B (pp. 27a-55a) to the Petition for Writ of Certiorari heretofore filed by the United States in this case,[1] No. 1614, O.T. 1970.

The opinion and order of the district court entered on motion for preliminary injunction are not reported and are reprinted as Appendix C (pp. 56a-61a) to the Petition for Writ of Certiorari filed by the United States.

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[1] *United States of America* v. *Scotland Neck City Board of Education*, No. 1614, O.T. 1970. All the appendix citations herein are to the appendices to the Petition filed by the United States.

The opinion and order on permanent injunction are reported at 314 F. Supp. 65 and are reprinted as Appendix D (pp. 62a-90a) to the Petition for Writ of Certiorari filed by the United States.

Jurisdiction

The judgment of the Court of Appeals was entered on March 23, 1971 and is reprinted as Appendix E (p. 91a) to the Petition for Writ of Certiorari filed by the United States. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

Question Presented

Whether the Court of Appeals erred in reversing a district court judgment voiding a statute which split the Halifax County school district on the ground that the "primary purpose" had not been shown to be "to retain as much separation of the races as possible," where one purpose for, and the effect of, the statute was to create school systems of substantially different racial composition.

Constitutional and Statutory Provisions Involved

This matter involves Section 1 of the Fourteenth Amendment to the Constitution of the United States, which provides:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any State deprive any

person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Chapter 31 of the 1969 Session Laws of North Carolina is set out in Appendix H (p. 101a) to the Petition for Writ of Certiorari filed by the United States.

Statement

Petitioners join in the *Statement* of the United States, and show the following:

When this Court rendered its decision in *Green* v. *County School Bd. of New Kent County*, 391 U.S. 430 (1968), 97% of the black children in Halifax County were attending 14 all-black schools. Ten of the 450 teachers in the system were teaching across racial lines. Only 46 of the 875 students attending the Scotland Neck School were black; no whites and 1,151 blacks attended the Brawley School located less than a mile away just outside the corporate limits.

After *Green*, the United States Department of Justice informed the Halifax County Board of Education of its intention to file suit unless the dual system in Halifax County was promptly undone. Litigation was postponed upon the Board's assurance that interim steps would be taken for 1968-69[2] and complete desegregation would follow in 1969-70.

The Board called upon the North Carolina Department of Public Instruction to prepare a school survey and plan for desegregation. That plan was completed in December,

[2] The interim steps undertaken included the assignment of grades seven and eight from all-black Brawley to the Scotland Neck School.

1968, calling for attendance zones, altering of grade structures, and pairings. Long-range plans for new school construction were also suggested. The immediate plan for 1969-70 included the Scotland Neck and Brawley schools within the same attendance zone, with assignment of grades 5-6 and 10-12 to Scotland Neck, and grades 1-4 and 8-9 to Brawley.

The Government and the Board agreed upon the State Department's plan. Shortly thereafter, however, the Board reneged upon its agreement and a bill was offered and was quickly passed by the North Carolina Legislature to create a new school district in Scotland Neck.[3] The Scotland Neck School was the only school facility located within the new unit.

The United States has shown that the racial composition of the new Scotland Neck system would be substantially whiter than the former Halifax system—57% white in Scotland Neck and 22% in the former Halifax district.[4] The following chart shows the dramatic change in the racial composition in the particular schools which would have been directly affected by Chapter 31:

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[3] The bill became Chapter 31 of the 1969 Session Laws (see Appendix H, p. 101a).

[4] The white ratio in Halifax would be reduced to 19% with the implementation of the new district.

	Scotland Neck School			Brawley School		
	White	Black	% Black	White	Black	% Black
1967-68 (the year of *Green*)	829	46	5.3%	0	1151	100.0%
1968-69 (after transfer of grades 7 and 8 from Brawley to Scotland Neck)	786	193	19.7%	0	1106	100.0%
1969-70						
a) Plan prepared by State Staff	325	690	68.0%	330	740	69.2%
b) If Chapter 31 were implemented	399	296	42.6%	83	807	90.7%

The United States filed suit in June, 1969 seeking an injunction against the implementation of Chapter 31 and an order requiring desegregation of the Halifax County schools. A preliminary injunction stayed the implementation of the new unit on August 8, 1969. The Attorney General of North Carolina intervened as a defendant on behalf of the State of North Carolina in October, 1969.

On December 17, 1969, a motion to intervene was filed on behalf of Pattie Cotton, et al., the petitioners herein, which was allowed shortly thereafter. The complaint in intervention attacked not only the creation of the Scotland Neck unit, but also the Littleton-Lake Gaston District, which was to be carved out of parts of both Halifax and Warren Counties.[5] The intervenors included 74 black children

[5] The creation of the Littleton-Lake Gaston unit was declared unconstitutional and enjoined in a supplemental proceeding in the Warren County case. *Turner* v. *Warren County Board of Education*, 313 F. Supp. 380. The Court of Appeals affirmed that holding on the same day it decided this case. *Turner* v. *Littleton-Lake Gaston School Dist.* (Appendix F to the Petition for Writ of Certiorari in No. 1416, O.T. 1970).

and their parents residing in Scotland Neck, 14 black students and their parents living within the Littleton-Lake Gaston District, and two black school teachers.

The final injunction was entered by district judges Butler and Larkins[6] on May 26, 1970 (pp. 62a-90a), and the decision below on March 23, 1971 (pp. 1a-18a).

Reasons for Granting the Writ

We think the United States has set forth compelling reasons why this Court should review the decision below. (1) The Court of Appeals has adopted an approach and a standard which threatens rights guaranteed by *Brown* v. *Board of Education*, 347 U.S. 483 (1954) for many black schoolchildren.[7] (2) The "primary purpose" test encourages the creation of new school districts where whites would enjoy a more favorable racial ratio.[8] (3) The test promises a "quagmire of litigation."[9] (4) The new test conflicts with this Court's requirement that a compelling and overriding State interest must be shown where State action has a racially discriminatory effect.[10] (5) It conflicts with the heavy burden which *Green* v. *County School Bd.*

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[6] Judges Butler and Larkins sat together to hear and decide the constitutionality of the three new units created by the 1969 Legislature—Warrenton, Littleton-Lake Gaston (313 F. Supp. 380) and Scotland Neck. All were found by them to impede desegregation and were declared unconstitutional.

[7] Petition for Writ of Certiorari in No. 1614, pp. 7-9; dissent of Judge Sobeloff (pp. 10a-12a); dissent of Judge Winter (p. 36a).

[8] Petition for Writ of Certiorari in No. 1614, p. 8; dissent of Judge Sobeloff (p. 30a); dissent of Judge Winter (pp. 45a-46a).

[9] Petition for Writ of Certiorari in No. 1614; p. 10; dissent of Judge Sobeloff (p. 42a).

[10] Petition for Writ of Certiorari in No. 1614, pp. 9-10; dissent of Judge Sobeloff (pp. 28a-35a).

of New Kent County, 391 U.S. 430 (1968) placed upon school boards to justify a desegregation plan less effective than available alternatives.[11] (6) The opinion below failed to give proper weight to the judgment of experienced district judges acting within their broad discretion in framing an equitable remedy to afford rights granted by the Constitution and guaranteed by *Brown*.[12] (7) The decision below conflicts with decisions of other Courts of Appeals.[13] We add only the following comments:

The government and dissenting judges below have rightly, we think, emphasized the substantial disproportion between the racial ratios of the seceding school district (57:43 white:black) and the whole school population of Halifax County (22:77 white:black). We think the chart above showing attendance and projected attendance at the traditionally white Scotland Neck School and the neighboring traditionally black Brawley School is helpful in understanding what the proponents of the new district sought to accomplish. As Judge Winter noted, "local legislation is enacted as a result of local desire and pressure" (46a). The local initiative in this case came from whites in Scotland Neck, in an attempt to keep their white school as white as possible. Under freedom of choice, only 5.3% of the students in their school were black. When the Justice Department insisted upon some desegregation progress for the 1968-69 school year, the County School Board moved the 7th and 8th grades from Brawley to Scotland Neck, raising the black enrollment to 19.7%. The complete desegregation plan drawn by State educational officials, accepted by the Justice Department, and initially agreed

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[11] Petition for Writ of Certiorari in No. 1614, p. 9; dissent of Judge Winter (pp. 44a-46a).

[12] Petition for Writ of Certiorari in No. 1614, p. 10.

[13] Petition for Writ of Certiorari in No. 1614, pp. 11-12.

to by the School Board, would have increased the black population at Scotland Neck to 68%. It would also have assigned whites to Brawley for the first time, with a resulting black enrollment of 69.2%. It was then that the County Board reneged upon its agreement and the secession bill was introduced in the Legislature.

With the creation of a new district, the Scotland Neck School would remain majority white. Instead of a 68% *black* majority under the State plan, it would have a 67.4% *white* majority and the number of white students assigned to Brawley would be reduced from 330 to 83. Moreover, the transfer arrangements which were planned for and established by the new unit offered a refuge for whites residing in the county who could afford the tuition. Thus, at the time the case was heard upon motion for preliminary injunction, transfers of whites in and blacks out had resulted in an increase in the white percentage in the Scotland Neck School from 57% to 74% (13a, 38a-39a, 51a-52a).[14]

By reversing the district court, the Court of Appeals has failed to keep the promise of *Brown*. In so doing, it has established and applied a new rule which invites more delay, more litigation, and more segregation. The district judges concluded that if implemented, Chapter 31 would impede rather than further desegregation in Halifax

[14] The Court of Appeals thought these transfers to be irrelevant in determining the constitutionality of Chapter 31, although clearly unconstitutional in themselves (p. 13a). Similar transfers, however, were apparently significant and controlling in the Court's conclusion that the statute creating the Littleton-Lake Gaston unit was unconstitutional (pp. 97a-98a). We think that Chapter 31 was clearly shown to impede desegregation in Halifax County without reference to the transfer plan, but agree with Judges Sobeloff and Winter (pp. 38a-39a; 51a-52a) that the transfers were relevant evidence.

County, and enjoined operation of the statute. That was the proper inquiry. The conclusion was inescapable. The decision of the district court should have been affirmed.

CONCLUSION

WHEREFORE, for the foregoing reasons, petitioners respectfully pray that a Writ of Certiorari be granted.

Respectfully submitted,

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